

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSEPH M. CALDWELL,

Plaintiff,

v.

MICHAEL HENNESSEY,

Defendants.

No. C 09-1775 JSW (PR)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

(Docket No. 2)

Plaintiff, a prisoner at the San Francisco County Jail in San Francisco, California, has filed a civil rights complaint complaining about a violation of his rights under the Establishment Clause. Plaintiff has filed a motion to proceed *in forma pauperis* (docket no. 2), which is GRANTED in a separate order filed simultaneously. In this order, the Court reviews Plaintiff's complaint pursuant to 28 U.S.C. § 1915A and dismisses the amended complaint with leave to amend within thirty days.

DISCUSSION

Plaintiff has filed a complaint which alleges that he has been forced to listen to religious programming in the form of Christian gospel music and Sunday morning religious services. Plaintiff alleges that there is nowhere that he has been housed where he can "get away" from the forced broadcast of this programming, however he does not specify whether this is because the programming is played on a television in a public area or whether the programming is broadcast throughout the jail. While Plaintiff's complaint states that "Deputies" controlled the choice of programming, he does not

1 identify who it is that subjected him to this programming. Plaintiff has only named
2 Sheriff Michael Hennessy as a Defendant in this action. However, the complaint fails to
3 set forth any allegations against Defendant Hennessey. Therefore, the complaint is
4 dismissed with leave to amend as set forth below.

5 I Standard of Review

6 Federal courts must engage in a preliminary screening of cases in which prisoners
7 seek redress from a governmental entity or officer or employee of a governmental entity.
8 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the
9 complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or
10 fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a
11 defendant who is immune from such relief.” *Id.* § 1915A(b). Pro se pleadings must be
12 liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.
13 1990).

14 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:
15 (1) that a right secured by the Constitution or laws of the United States was violated, and
16 (2) that the alleged violation was committed by a person acting under the color of state
17 law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

18 II Legal Claims

19 Plaintiff's complaint challenges the “forced broadcast of [religious]
20 programming” within the San Francisco County Jail. However, in his complaint,
21 Plaintiff does not make clear how the only named Defendant, Michael Hennessy, has
22 violated his constitutional rights.

23 A complaint that fails to state the specific acts of the defendant which violated the
24 plaintiff's rights fails to meet the requirements of Rule 8(a)(2) of the Federal Rules of
25 Civil Procedure. *Hutchinson v. United States*, 677 F.2d 1322, 1328 n.5 (9th Cir. 1982).
26 District courts must afford pro se prisoner litigants an opportunity to amend to correct
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1 any deficiency in their complaints. *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir.
2 2000) (en banc).

3 Plaintiff's complaint fails to provide a short and plain and separate statement
4 regarding the mistreatment he suffered, how it violated his constitutional rights, whether
5 he suffered any injury as a result, and the specific conduct of each individual Defendant
6 that he asserts is responsible for a constitutional violation. Plaintiff must specifically
7 identify what any named Defendant did or did not do in order to state a claim against
8 them. As such, Plaintiff will be granted leave to amend to allege specifics.

9 In his amended complaint, Plaintiff must establish legal liability of each person
10 named as a Defendant for the claimed violation of his rights. Liability may be imposed
11 on an individual defendant under section 1983 if the plaintiff can show that the
12 defendant proximately caused the deprivation of a federally protected right. *See Leer v.*
13 *Murphy*, 844 F.2d 628, 634 (9th Cir. 1988); *Harris v. City of Roseburg*, 664 F.2d 1121,
14 1125 (9th Cir. 1981). A person deprives another of a constitutional right within the
15 meaning of section 1983 if he does an affirmative act, participates in another's
16 affirmative act or omits to perform an act which he is legally required to do, that causes
17 the deprivation of which the plaintiff complains. *See Leer*, 844 F.2d at 633; *see, e.g.,*
18 *Robins v. Meecham*, 60 F.3d 1436, 1442 (9th Cir. 1995) (prison official's failure to
19 intervene to prevent 8th Amendment violation may be basis for liability). Sweeping
20 conclusory allegations will not suffice; the plaintiff must instead "set forth specific facts
21 as to each individual defendant's" deprivation of protected rights. *Leer*, 844 F.2d at 634.

22 With regard to the supervisory employee named, Defendant Hennessey, Plaintiff
23 should be mindful that a supervisor may be liable under § 1983 only upon a showing of
24 (1) personal involvement in the constitutional deprivation or (2) a sufficient causal
25 connection between the supervisor's wrongful conduct and the constitutional violation.
26 *Redman v. County of San Diego*, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc). A
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1 supervisor therefore generally “is only liable for constitutional violations of his
2 subordinates if the supervisor participated in or directed the violations, or knew of the
3 violations and failed to act to prevent them.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th
4 Cir. 1989).

5 Plaintiff must allege facts which clearly and briefly identify the injury he
6 personally suffered, or continues to suffer, as a result of the alleged actions of named
7 individual Defendants. Without this basic information, the complaint cannot proceed.
8 The complaint need not be long. In fact, a brief and clear statement with regard to each
9 claim listing each Defendant’s actions regarding that claim is preferable. The amended
10 complaint should comply with Rule 8 and identify how any named Defendant is
11 responsible. Accordingly, the complaint is DISMISSED WITH LEAVE TO AMEND.
12 Plaintiff will be provided with thirty days in which to amend to correct the deficiencies
13 in his complaint.

14 CONCLUSION

15 For the foregoing reasons and for good cause shown,

16 1. The complaint is DISMISSED WITH LEAVE TO AMEND, as indicated
17 above. Plaintiff shall file an amended complaint within ***thirty (30) days from the date of***
18 ***this order*** in which he asserts factual allegations against all Defendants named therein.
19 The amendment must include the caption and civil case number used in this order and
20 the words “COURT ORDERED AMENDED COMPLAINT” on the first page. Failure
21 to amend within the designated time will result in dismissal of the complaint.


22 2. Plaintiff is advised that an amended complaint supersedes the original
23 complaint. “[A] plaintiff waives all causes of action alleged in the original complaint
24 which are not alleged in the amended complaint.” *London v. Coopers & Lybrand*, 644
25 F.2d 811, 814 (9th Cir. 1981). Defendants not named in an amended complaint are no
26 longer defendants. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.), *cert. denied*,

1 506 U.S. 915 (1992).

2 3. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the
3 Court informed of any change of address and must comply with the Court's orders in a
4 timely fashion. Failure to do so may result in the dismissal of this action under Federal
5 Rule of Civil Procedure 41(b).

6 IT IS SO ORDERED.

7 DATED: October 8, 2009

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JEFFREY S. WHITE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH M CALDWELL,
Plaintiff,

Case Number: CV09-01775 JSW

CERTIFICATE OF SERVICE

v.


MICHAEL HENNESSEY et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 8, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Joseph M. Caldwell
2277685
850 Bryant Street
San Francisco, CA 94103

Dated: October 8, 2009


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk